



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: MARCH 28, 2023

IN THE MATTER OF:

Appeal Board No. 628126

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits. The employer requested a hearing and objected contending that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There was an appearance on behalf of the employer. By decision filed February 03, 2023 (), the Administrative Law Judge overruled the employer's objection and sustained the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a hearing. Prior to the February 2, 2023 hearing, the claimant's representative informed the Hearing Section that he could not appear as he was out of the country. The Board has decided to give the claimant a further opportunity to appear and present testimony and evidence regarding the circumstances of how his employment ended.

The employer provided hearsay evidence that the claimant hit the employer's consumer and used excessive force on this individual on the employer's premises, and that the claimant was arrested on August 30, 2022 for such

conduct. The parties are placed on notice that Judge will consider this issue in evaluating whether he lost his employment through misconduct. At the further hearing, the employer should produce Mary Ann Stein and any witnesses to the incident. Testimony should be taken regarding the incident with the consumer including the date and time of incident. The parties should produce any court disposition to the criminal matter.

Prior to the remanded hearing, the claimant or his representative should arrange with the Hearing Section to review the transcript of the hearing held on February 2, 2023, and the exhibit that was taken into evidence at that hearing. The claimant shall be afforded an opportunity to cross-examine Ms. Stein and offer any objections to the exhibit. The parties also may produce any other relevant witnesses or documents. The Judge may take any additional testimony and evidence necessary to decide the case.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue, only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the employer should produce Mary Ann Stein and any witnesses to the incident; and it is further

ORDERED, that the parties should produce any court disposition to the criminal matter; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issue, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER